

#### § 4.225

or explanation, the administrative law judge or Indian probate judge may:

(1) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other interested party or in accordance with other evidence available to the administrative law judge or Indian probate judge; or

(2) Make such other ruling as the administrative law judge or Indian probate judge determines just and proper.

(b) For purposes of paragraph (a) of this section, failure to comply with discovery includes failure to:

(1) Comply with a request for the production of a document under § 4.220;

(2) Appear for examination under § 4.221;

(3) Respond to interrogatories or requests for admissions under § 4.222; or

(4) Comply with an order of the administrative law judge or Indian probate judge issued under § 4.223.

#### § 4.225 Prehearing conference.

Before a formal hearing, the administrative law judge or Indian probate judge may, upon his or her own motion or upon the request of any interested party, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

#### FORMAL HEARINGS

SOURCE: 70 FR 11818, Mar. 9, 2005, unless otherwise noted.

#### § 4.230 Authority and duties of the administrative law judge or Indian probate judge.

(a) The authority of the administrative law judge or Indian probate judge in all formal hearings in probate pro-

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ceedings includes, but is not limited to authority:

(1) To administer oaths and affirmations;

(2) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any interested party, to any person whose testimony he or she believes to be material to a hearing;

(3) To permit any interested party to cross-examine any witness;

(4) To appoint a guardian ad litem to represent any minor or incompetent interested party at hearings;

(5) To rule upon offers of proof and receive evidence;

(6) To take and cause depositions to be taken and to determine their scope; and

(7) To otherwise regulate the course of the hearing and the conduct of witnesses, interested parties, and attorneys at law appearing therein.

(b) Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the administrative law judge or Indian probate judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness.

#### § 4.231 Formal hearings.

(a) All testimony in formal Indian probate hearings must be under oath and must be taken in public, except in circumstances that, in the opinion of the administrative law judge or Indian probate judge, justify all but interested parties to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all interested parties and attorneys who attended such hearing.

#### § 4.232 Evidence; form and admissibility.

(a) Interested parties may offer at a formal hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative

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law judge's or Indian probate judge's supervision as to the extent and manner of presentation of such evidence.

(b) The administrative law judge or Indian probate judge may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence. The weight to be attached to evidence presented in any particular form is within the discretion of the administrative law judge or Indian probate judge, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the interested parties, may be used as evidence at the hearing.

(d) The administrative law judge or Indian probate judge may in any case require evidence in addition to that offered by the interested parties.

### §4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in §4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses.

(1) These affidavits must be made before an officer authorized to administer oaths, must be attached to the will, and must be in substantially the following form and content:

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

I, \_\_\_\_\_, being first duly sworn, on oath, depose and say: That I am an \_\_\_\_\_ (enrolled or unenrolled) member of the \_\_\_\_\_ Tribe of Indians in the State of \_\_\_\_\_; that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, I requested \_\_\_\_\_ to prepare a will for me; that the attached will was prepared; that I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses; that they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and

that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

Testator/Testatrix \_\_\_\_\_

We, \_\_\_\_\_ and \_\_\_\_\_, each being first duly sworn, on oath, depose and state: That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, \_\_\_\_\_, a member of the \_\_\_\_\_ Tribe of Indians of the State of \_\_\_\_\_, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us, and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_/20\_\_\_\_, by \_\_\_\_\_ testator/testatrix, and by \_\_\_\_\_ and \_\_\_\_\_, attesting witnesses.

(Title) \_\_\_\_\_

(2) If uncontested, a self-proved will may be approved and distribution may be ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined.

(1) If none of the attesting witnesses resides near the place of hearing at the time appointed for proving the will, the administrative law judge or Indian probate judge may:

(i) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and